



April 22, 2006

VIA EMAIL

The Fair Political Practices Commission
Attention: Commission Chair Liane M. Randolph
428 J Street, Suite 620
Sacramento, CA 95814

RE: IN RE PIRAYOU OPINION REQUEST O-06-016
4/24/06 – AGENDA ITEM 2

Dear Chairperson Randolph and the Honorable Members of the Commission:

On behalf of former Assemblymember Ellen Corbett (Ms. Corbett), I respectfully request you adopt Draft Opinion No. O-06-016 prepared by the Commission Staff on April 20, 2006.

Contrary to the recent Memorandum (Memorandum) issued by the Fair Political Practices Commission's (Commission) Legal Division on April 20, 2006, the Commission unquestionably has the legal authority to provide the relief requested by Ms. Corbett.

Respectfully, Ms. Corbett disagrees with the Memorandum's analysis.

Clearly the Memorandum does not cite any published opinion that explicitly holds the Commission does not have the equitable power to grant the relief sought in this case.

In fact, contrary to the multiple efforts to distinguish the Miller Advice Letter on minor bases, the Commission Staff itself in Miller (and other advice letters) used the Commission's equitable powers to grant relief to candidates, contrary to the conclusion set forth in the Memorandum:

[c]onsequently, there is not explicit authority regarding the Commission's ability to grant the relief requested, either in favor or against. (Memorandum at Page 2).

Importantly, the precise language used by the Commission Staff in Miller is worth repeating again and, respectfully, is controlling in Ms. Corbett's case:

However, under the unique facts of this situation, your description of the payment to the campaign committee was due to **an error of law**. **The Commission, in extraordinary circumstances where hardship would otherwise result and the purposes of the Act would not be furthered by a strict application of the law, has allowed committees to remedy an error that was made due to a**

good faith misreading of the law. Miller Advice Letter, No. A-03-017, 2003 Cal. Fair-Pract. LEXIS 45, citing Tomberlin Advice Letter, No. A-97-505, 1997 Cal. Fair-Pract. LEXIS 37; Johannessen Advice Letter, No. A-96-281, 1996 Cal. Fair-Pract. LEXIS 210; and Roney Advice Letter, No. A-92-420, 1992 Cal. Fair-Pract. LEXIS 228.

In short, the Commission, in the face of the exact same statute – section 89519 – and its express terms, allowed a losing candidate to use what were clearly “surplus funds” under the Act for a purpose explicitly prohibited by the Act’s specific language (reimbursing of a candidate fee).

Furthermore, the Miller opinion was not the first time the Commission exercised its equitable powers to provide relief similar to the relief sought by Ms. Corbett from a strict reading of a statute. The Miller opinion cited the following Staff opinions: Tomberlin, Johannessen, and Roney. See also, Campbell Advice Letter, No. A-04-153, 2004 Cal. Fair-Pract. LEXIS 152.

To date, neither Miller nor the other letters (addressing the equitable powers of the Commission to grant relief in cases of hardship) have been rescinded and, as such, remain valid.

If the argument submitted in the Memorandum were to be accepted, the question arises: Under what authority did the Commission Staff issue the previous letters cited above providing equitable relief to candidates who made an error of law and faced a significant hardship due to a strict reading of a statute? Clearly, the Commission Staff believed it had the authority to issue those advice letters.

Furthermore, if the Commission Staff itself had the authority, then clearly each Commissioner in Ms. Corbett’s case can exercise his or her own independent judgment to determine whether the relief sought by Ms. Corbett is consistent with the legal principles outlined in the advice letters cited above and issued by the Commission Staff.

In short, it is one thing to disagree with a particular result in any of the “hardship” cases cited above; it is quite another thing to suggest that in light of the history of the Commission’s advice letters, the Commission somehow does not have equitable powers to grant Ms. Corbett relief from a hardship resulting from an error of law by her treasurer, particularly given the unique factual context of this case.

The Legal Division’s reliance on the Consumers Lobby Against Monopolies v. PUC (1979) 25 Cal. 3d 891) as a basis to suggest the Commission does not have authority to exercise its independent judgment and provide the equitable relief requested by Ms. Corbett is simply wrong.

As said forth in the draft opinion, in Watson et. al. v. FPPC et. al (1990) 217 Cal. App. 3d 1059, the Court clearly held that the Commission “under its broad powers to amend and rescind rules and regulations to carry out the purposes of the Act, . . . can interpret the Act and its implementing rules and regulations to respond effectively to a specific set of facts when necessary.” Draft Opinion at Page 6, citing Section 83112 and In re Solis (2000) 14 FPPC Ops. 7. (Emphasis added).

Additionally, discussing the Consumers case, the Memorandum states that the Court found “the California Constitution conferred broad authority on the PUC to...fashion various equitable remedies...”. (Memorandum at Page 3). Similarly, the Commission has broad authority to grant equitable relief, particularly when such powers are exercised in a narrow and specific context such as Ms. Corbett’s case.

Any attempt to distinguish Watson based upon the factual context or to point to the Consumers case is inconsistent with the Commission Staff’s own previous conduct wherein it issued advice letters dealing with hardship and provided equitable relief in a narrow and specific context and contrary to a strict application of the law.

Therefore, the Commission does have the authority to review the particular facts of Ms. Corbett’s case, as has been demonstrated thus far to the Commission, and based upon these facts and the existing precedent dealing with hardship and errors of law, issue the requested relief.

Respectfully, Ms. Corbett asks the Commission to grant the relief requested under these extraordinary circumstances caused by her Treasurer’s gross negligence and allow the transfer of funds remaining in her Assembly Committee to her Senate Committee.

Very truly yours,

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